

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

**FPK SERVICES LLC D/B/A
HEALTHLABS.COM, ET AL.:**

Plaintiffs,

V.

JOHN DOES 1-10.

Defendants

Case No.: 20-CV-6141 YGR

**ORDER DENYING PLAINTIFFS' RENEWED
Ex Parte MOTION FOR LEAVE TO TAKE
EXPEDITED DISCOVERY;**

ORDER TO SHOW CAUSE RE: DISMISSAL FOR LACK OF JURISDICTION

Dkt. No. 12

Plaintiffs FPK Services, LLC dba HealthLabs.com, *et al.*, bring this renewed motion *ex parte* seeking leave to take expedited discovery after having filed an amended complaint. The Court has considered the renewed motion, supporting documents, and amended pleading in this action, and **DENIES** the motion for the reasons stated herein.

Relatedly, and for the same reasons set forth below, plaintiffs FPK Services LLC D/B/A Healthlabs.Com; Fiyyaz Pirani ;Mahvish Linares; and Travis Davis are hereby **ORDERED TO SHOW CAUSE** why this action should not be dismissed for lack of personal jurisdiction.

Plaintiffs contend that this court has personal jurisdiction over the unnamed Doe defendant based on the following alleged specific contacts with California: (1) Doe 1 directed activities toward this Judicial District through the use of TextNow, and TextNow’s “computers and servers located in this District” (First Amended Complaint, Dkt. No. 11, ¶ 8); and (2) Doe 1 unlawfully accessed and used plaintiff HealthLabs.com’s computers, servers and/or data storage facilities located in this Judicial District in order to obtain the cellular phone numbers to send the harassing texts. (*Id.* ¶ 9.) In other words, plaintiffs argue that minimum contacts with a California forum are established because defendant: (1) wrongfully accessed a non-California resident plaintiff’s servers in California, and (2) contacted plaintiffs by using an internet-based message transmission system

1 operated by a non-party company based in California. Plaintiffs offer no authority for either novel
2 theory, nor do they appear to state a colorable basis for personal jurisdiction.

3 In the absence of an applicable federal statute concerning personal jurisdiction, the district
4 court applies the law of the state in which it sits. *Schwarzenegger v. Fred Martin Motor Co.*, 374
5 F.3d 797, 800–01 (9th Cir. 2004); Fed.R.Civ.P. 4(k)(1)(A). “Because California’s long-arm
6 jurisdictional statute is coextensive with federal due process requirements, the jurisdictional
7 analyses under state law and federal due process are the same.” *Id.*

8 “[F]or a court to exercise specific jurisdiction over a claim, there must be an ‘affiliation
9 between the forum and the underlying controversy, principally, [an] activity or an occurrence that
10 takes place in the forum State.’” *Bristol-Myers Squibb Co. v. Superior Court*, 137 S.Ct. 1773, 1781
11 (2017) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).
12 The Ninth Circuit applies a three-part test to determine whether a court has specific jurisdiction
13 over a defendant: (1) The non-resident defendant must purposefully direct his activities or
14 consummate some transaction with the forum or resident thereof; or perform some act by which he
15 purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking
16 the benefits and protections of its laws; (2) the plaintiff’s claim must be one which arises out of or
17 relates to the defendant’s forum-related activities; and (3) the exercise of jurisdiction must comport
18 with fair play and substantial justice, *i.e.*, it must be reasonable. *Axiom Foods, Inc. v. Acerchem
Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017). To determine whether a defendant purposefully
19 directed its tortious activity toward the forum state, a court must apply the “effects test” from
20 *Calder v. Jones*, 465 U.S. 783 (1984). *Id.* This test examines whether: (1) the defendant committed
21 an intentional act; (2) the act was expressly aimed at the forum state; and (3) the act caused harm
22 the defendant knew would likely be suffered in the forum state. *Id.*

24 Here, plaintiffs’ allegations that defendant improperly accessed HealthLabs.com’s computer
25 servers located in this district do not state, on their face, purposeful direction of the alleged
26 activities to a California forum. “[T]he mere fact that [a defendant’s] conduct affected plaintiffs
27 with connections to the forum State does not suffice to authorize jurisdiction.” *Walden v. Fiore*,
28 571 U.S. 277, 291 (2014). “Such reasoning improperly attributes a plaintiff’s forum connections to

1 the defendant. . . . [and] obscures the reality that none of [defendant's] challenged conduct had
2 anything to do with [the forum] itself." *Id.* at 289; *see also Morrill v. Scott Financial Corporation*,
3 873 F.3d 1136, 1145 (9th Cir. 2017) (that mere fact that plaintiffs were from Arizona and some
4 incidental harm could arise from defendant's actions in Nevada did not establish express aiming for
5 an Arizona forum).

6 Thus, for example, where plaintiffs' claims under the Computer Fraud and Abuse Act were
7 based upon an alleged computer "phishing" and "hacking" scheme, the fact that plaintiffs'
8 computer servers were located in California was insufficient to establish that defendants had
9 expressly aimed their conduct to a California forum. *Broidy Capital Mgmt., LLC v. Qatar*, No. CV
10 18-2421-JFW(EX), 2018 WL 9943551, at *7 (C.D. Cal. Aug. 22, 2018). The servers' location was
11 "random," "fortuitous," or "attenuated" to defendants' alleged actions of hacking plaintiffs'
12 accounts and obtaining confidential and private information. *Id.*

13 As in *Broidy*, the Court finds the allegations here insufficient to establish minimum contacts
14 to support personal jurisdiction over defendant in California. Defendant's alleged intentional act
15 was not "expressly aimed" at California, but instead was only randomly or fortuitously connected
16 to California by virtue of HealthLabs.com's use of computer servers purportedly located in the
17 state.

18 With respect to defendant's alleged use of the TextNow service to send messages to
19 plaintiffs, such facts likewise do not state a sufficient basis for personal jurisdiction. Defendant's
20 use of a third-party internet service headquartered in California to accomplish the wrongful conduct
21 does not, on its own, establish minimum contacts with that forum. *Burdick v. Superior Court*, 233
22 Cal.App.4th 8, 13 (2015). In *Burdick*, a defendant posted defamatory statements on a social media
23 website based in California. *Id.* The court there held that this allegation was "insufficient in itself
24 to create the minimum contacts necessary to support specific personal jurisdiction in a lawsuit
25 arising out of that posting," even when defendant knew that plaintiff, the target of the defamatory
26 post, resided in California. *Id.* "[I]t is necessary that the nonresident defendant not only
27 intentionally post the statements on the [social media] page, but that the defendant expressly aim or
28 specifically direct his or her intentional conduct *at the forum*." *Id.* "[T]he exercise of personal

1 jurisdiction must be based upon forum-related acts that were personally committed by the
2 nonresident defendant, not upon the *plaintiff's contacts with the forum* or acts committed by
3 codefendants or *third parties.*" *Id.* (emphasis supplied).

4 The Court notes that Rule 45 of the Federal Rules of Civil Procedure permits a party to
5 serve a subpoena anywhere in the United States. Fed. R. Civ. P. 45(b)(2). Only in the event that
6 the party must compel compliance with the subpoena outside the jurisdiction of the issuing court
7 would a petition in the *compliance* court be necessary. See Fed. R. Civ. P. 45 (c), (d), (e), (f) (court
8 for the district where compliance is required enforces duty to avoid imposing undue burden or
9 expense and hears motions to quash or modify unless exceptional circumstances warranting transfer
10 to issuing court). Such enforcement motions for cases not pending in this district are brought by
11 the filing of a miscellaneous action.

12 For the foregoing reasons, the Court finds that plaintiffs have failed to allege a basis for
13 jurisdiction and it appears the First Amended Complaint herein should be dismissed.

14 The motion for expedited discovery is **DENIED**.

15 Plaintiffs are **DIRECTED** to file a response to the Order to Show Cause no later than
16 **October 23, 2020.**

17 The Court **SETS** a compliance deadline on the Court's 9:01am calendar for **October 30,**
18 **2020**, as a placeholder. No appearance will be required at that time. Should the Court find a
19 hearing is necessary, it will provide further notice of the time and date for a hearing via
20 videoconference on the Zoom platform.

21 This terminates Docket No. 12.

22 **IT IS SO ORDERED.**

23 Date: October 8, 2020


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

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